



June 21, 1999

Ms. Linda Wiegman
Supervising Attorney
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR99-1704

Dear Ms. Wiegman:

You have asked whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 125070.

The Texas Department of Health (the "department") received a request for certain information concerning four facilities "in Texas owned or operated by Gambro Healthcare or any of its affiliates." Specifically, the requestor seeks the "[d]ate and type of survey," "[n]ature of deficiency," and type of "enforcement of action." In response to the request, you submit to this office for review the information which you assert is responsive. You contend that the submitted documents are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 251.015 of the Health and Safety Code. In the alternative, you also argue that the submitted information is excepted from disclosure pursuant to section 552.101 in conjunction with section 5.08 of article 4495b of Vernon's Texas Civil Statutes and the common-law right to privacy. We have considered the exceptions and arguments you have raised and reviewed the submitted information.¹

You note that the department did not seek an open records decision from this office within the statutory ten-day deadline. *See* Gov't Code § 552.301. The department's delay in this matter results in the presumption that the requested information is public. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. The applicability of section 552.101 generally constitutes a compelling reason.

Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. You contend that the submitted

¹We assume that any other responsive information that is not at issue will be provided to the requestor.

documents are confidential pursuant to section 251.015(c) of the Health and Safety Code, and are, therefore, excepted from disclosure under section 552.101. Chapter 251 of the Health and Safety Code provides for the licensing and regulation of end stage renal disease facilities. You state that the department licenses the facilities about which the requestor is seeking information.

Section 251.015 of the Health and Safety Code provides as follows:

(a) A medical review board shall advise the board on minimum standards and rules to be adopted under this chapter.

(b) The medical review board shall review the information on quality of care provided in the annual report filed under Section 251.013(f) and other appropriate information provided to or compiled by the [Texas Department of Health] with respect to an end stage renal disease facility. Based on the review, the medical review board may advise the department about the quality of care provided by a facility and recommend an appropriate corrective action plan under Section 251.061 or other enforcement proceedings against the facility.

(c) Information concerning the quality of care provided to or compiled by the department or medical review board and a recommendation of the medical review board are confidential. The information or recommendation may not be made available for public inspection, is not subject to disclosure under Chapter 552, Government Code, and is not subject to discovery, subpoena, or other compulsory legal process.

(d) The department, in its discretion, may release to a facility information relating to that facility that is made confidential under Subsection (c). Release of information to a facility under this subsection does not waive the confidentiality of that information or the privilege from compulsory legal process.

Section 251.061(g) of the Health and Safety Code provides in part:

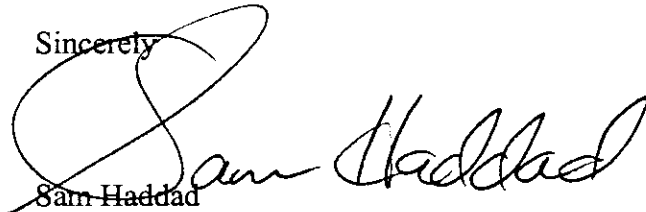
(g) A corrective action plan is not confidential. Information contained in the plan may be excepted from required disclosure under Chapter 552, Government Code, in accordance with that chapter or other applicable law.

The submitted documents include recommendations from the medical review board, and information that the department compiled during the licensing surveys. The medical review board's recommendations and the information the department compiled during the licensing

survey of the facilities at issue are confidential under section 251.015(c), and must be withheld from disclosure under section 552.101.² You represent that one of the submitted documents, which you have marked with a blue tag, is a corrective action plan. If this document is a corrective action plan, then section 251.061(g) excludes it from the coverage of the confidentiality provision in section 251.015(c) and the department must release it to the requestor. If this document is not a corrective action plan, then it is confidential under section 251.015(c) and must be withheld from disclosure under section 552.101.

We are resolving this matter with an informal letter ruling rather than with a published open records decision.³ This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Sam Haddad", is written over the word "Sincerely,".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 125070

Encl.: Submitted documents

cc: Mr. Arthur A. Harvey
State of New Jersey
Department of Health & Senior Services
CN 360
Trenton, New Jersey 08625-0360
(w/o enclosures)

²In this instance, the requestor, a representative of the State of New Jersey Department of Health and Senior Services, seeks the requested information apparently for an official purpose. However, under the Texas Public Information Act, the information is excepted under section 552.101 in conjunction with section 251.015, and we are not aware of a statutory duty or right by the State of New Jersey Department of Health and Senior Services to obtain this information. Gov't Code § 552.007.

³We note that your other arguments against disclosure were limited to information obtained during the licensing survey. Since we conclude that this information is confidential under section 251.015(c), we do not address your other arguments against disclosure.